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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

File:



Office: VERMONT SERVICE CENTER

Date:

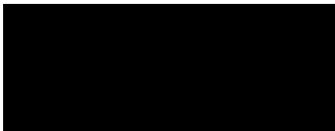
**JUL 18 2003**

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:




**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor or minister immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the director disregarded compelling evidence of eligibility.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the

United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor from April 19, 1999 to the filing date.

[REDACTED] of the petitioning church states that the beneficiary “has been a full-time Associate Pastor with Hope Ministries from 1997 to August, 1999 and with our church from Sept., 1999 to the present day.” Elder Emidih states that the petitioner “is a Christian Pentecostal denominational church founded in August of 1999.”

In an effort to establish the beneficiary’s past work history, the petitioner submits copies of various documents. A certificate of ordination shows that the International Ministerial Fellowship (IMF) ordained the beneficiary on October 5, 1999 “upon the request and recommendation of Vital Word Christian Church.” The ordination was announced in the December 1999/January 2000 issue of the IMF’s newsletter, *Gathering*, in a section entitled “Welcome to the Family.” The beneficiary is one of ten ordained ministers listed. His location is shown as “Queens, New York” but no specific church is identified.

The record shows that the Knowledge Brings Power Ministry had previously ordained the beneficiary on December 8, 1990. It is not clear why the beneficiary was ordained a second time in 1999. Vital Word Christian Church, which had recommended the beneficiary’s 1999 ordination, employed the beneficiary from May 1993 to December 1997. The record contains nothing from Hope Ministries, identified as the beneficiary’s employer from 1997 to August 1999, and the 1999 ordination certificate does not mention Hope Ministries.

The petitioner submits various fliers and promotional materials, some of them undated, which mention the beneficiary. These materials all concern the beneficiary’s work with the petitioning church, which did not begin until September 1999. Therefore, these materials cannot suffice to establish the beneficiary’s employment for the complete two-year period preceding the filing date.

The petitioner submits copies of the beneficiary's income tax returns for 1999 and 2000. On both returns, the beneficiary identifies his occupation as "minister." Under "wages, salaries, tips, etc.," the beneficiary claims no income. The only income that the beneficiary has claimed for those two years is listed under "business income," in the amounts of \$9,600 in 1999 and \$14,400 in 2000. The beneficiary identifies his "principal business or profession" as "religious minister." The source of the beneficiary's "business income" as a "religious minister," if not from wages or salaries, is unclear.

The director instructed the petitioner to submit further evidence to show that the beneficiary worked continuously as a minister during the two years immediately prior to the filing of the petition. In response, the petitioner submits letters and various documents. A copy of a letter dated May 15, 1999, from Frederick D. Lloyd, pastor and president of [REDACTED] indicates that the beneficiary "has been a member and associate pastor in my church since December of 1997." The petitioner also submits a copy of a receipt, dated August 20, 1999, showing that [REDACTED] had filed an appeal following the denial of a special immigrant religious worker petition that it had filed on the beneficiary's behalf. The record does not reflect the outcome of that appeal, but it is now moot because the beneficiary no longer works for the organization that had filed that petition.

In another letter, an official of the petitioning church (the signature is not legible) states:

Subsequent to August, 1999, [the beneficiary] left [REDACTED] in order to form his own church. . . . This activity is documented by his filing of the application for 501(c)(3) status with the IRS for [the petitioning organization] which was approved on December 23, 1999, as shown by the IRS letter previously filed.

The record contains a copy of the aforementioned letter from the Internal Revenue Service. The petitioner has submitted other evidence such as "the flyer for the grand opening of service for [the petitioner], dated January 30, 2000."

The director denied the petition, stating "[t]he record does not establish that the beneficiary has the required two years of experience in the religious occupation." The director also stated "[t]he beneficiary has a Social Security Number, however, without W-2s and copies of the beneficiary's tax return, there is no evidence that the beneficiary ever worked for the petitioner." As discussed above, the petitioner did in fact submit copies of the beneficiary's tax return, and the evidence of record indicates that the beneficiary not only has worked for the petitioner, he is in fact the founder of the petitioning organization. This evidence overcomes part of the director's decision, but it does not address the director's finding that the petitioner has not established the beneficiary's required two years of continuous employment.

On appeal, [REDACTED] assistant pastor for the petitioner, asserts that the director's decision was "arbitrary and capricious" and "based on a complete disregard of the body of evidence." [REDACTED] cites numerous previously submitted documents to "show that [the

beneficiary] is indeed a qualified minister.” The beneficiary’s qualifications as a minister are not in question and therefore cannot overcome the director’s findings.

██████████ acknowledges the previously submitted documentation showing that the petitioner did not conduct religious services until the end of January 2000. ██████████ states:

Even though the grand opening took place in January of 2000, [the beneficiary’s] work for the church in the planning and organizing of the church took place well in advance of that date, going back at least one year. He was working full time in that effort, while at the same time working full-time for ██████████

██████████ assertion that the beneficiary “was working full time” to establish the petitioning entity “at least one year” prior to “January of 2000” is not consistent with other claims that the beneficiary first joined the petitioning organization in August or September of 1999. ██████████ had earlier indicated that the petitioning church was “founded in August of 1999.” ██████████ fails to reconcile these two seemingly incompatible claims. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The petitioner submits an affidavit, jointly signed by ten founding members of the petitioning organization, which states in part:

[P]rior to December 1999, [the petitioning entity] was an outreach ministry that meets in the home of ██████████. . . . From this location we moved to a bigger place. . . . The need to urgently reach the communities and nation became our priority. Hence the Church . . . became a church to reach out more to the communities.

The affidavit reaffirms that the petitioner paid the beneficiary in 1999 for service “as our pastor and spiritual leader,” as reflected on the tax returns. The record provides no independent support for the above assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains nothing to show that the beneficiary’s work for the petitioner prior to January 2000 amounted to the traditional duties of a minister. The affidavit is signed by founders of the petitioning entity, and therefore they are parties to the petition. The regulation at 8 C.F.R. § 103.2(b)(2)(i) indicates that affidavits are acceptable in lieu of documentary evidence only when “sworn to or affirmed by persons who are not parties to the petition.” The information in the above affidavit is inconsistent with prior claims made by members of the petitioning church, including members who later signed the affidavit. We cannot ignore these inconsistencies when weighing the credibility and sufficiency of the materials presented in support of the petition.

Review of the record reveals another serious issue. In a letter submitted with the initial filing of the petition, a church elder had stated that the petitioner "is a Christian Pentecostal denominational church founded in August of 1999," although the record contains no documentation of formal affiliation with any recognized Pentecostal denomination. The beneficiary's Statement of Ordained Clergy, filed with the City Clerk of New York, identifies the beneficiary's denomination as "International Ministerial Fellowship." While this entity is named on the beneficiary's 1999 certificate of ordination, there is no evidence that the International Ministerial Fellowship constitutes a religious denomination *per se*, as opposed to an organization composed of ministers.

Prior to the denial, the director had instructed the petitioner to submit evidence regarding the petitioner's and the beneficiary's religious denomination. In a letter dated April 3, 2002, an official of the petitioning church (the signature is not legible) states:

In response to the INS request for the religious denomination of the employing organization, we are an inter-denominational Christian church. Please note that the beneficiary has been a member of the Christian Pentecostal denomination since he was a child. Please note that although his personal denominational affiliation is as a Pentecostal Christian, his religious training and work since he became a full-time Minister in 1990 has been to bring the Christian faith and Gospel to people from all denominations. His work has been as an inter-denominational Christian Minister.

The petitioner notes the regulatory definition of "religious denomination" at 8 C.F.R. § 204.5(m)(2), which states in pertinent part "an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination." This regulation, however, does not indicate that all inter-denominational religious groups constitute, in the aggregate, a denomination. Rather, each individual inter-denominational religious organization is considered to be a distinct religious denomination.

The regulation at 8 C.F.R. § 204.5(3)(ii)(A) requires the petitioner to submit evidence to show "[t]hat, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination." Pursuant to the above regulation, the denomination in question is the petitioning organization. The petitioner was not recognized as a tax-exempt religious organization until December 23, 1999, and conducted its "grand opening" services on January 30, 2000. There is no evidence that the petitioning denomination existed in any meaningful sense as of April 1999, two years prior to the petition's filing date. As noted above, a church elder originally stated that the church was founded in August 1999. If there was no formal organizational structure in place, then a group of worshipers regularly gathering at a private home is not a religious organization.

According to the petitioner, the beneficiary worked full-time for [REDACTED] (and thus outside the petitioning denomination) until August 1999. We do not accept that the beneficiary could have been simultaneously a member of two distinct denominations during mid-1999, when he was working for [REDACTED] but laying the groundwork for his own organization. If the petitioner is, as claimed, an inter-denominational organization, then it constitutes its own denomination pursuant to 8 C.F.R. § 204.5(m)(2). The preponderance of the evidence indicates that the petitioner did not exist early enough for the beneficiary to have been a member of that denomination for at least two years prior to the petition's filing date. This information raises another sufficient basis for denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.